IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8517 OF 2004

Dattatray Mahadeo Patil & Anr. .. Petitioners

V/s

Dilip Shridhar Deodhar & Anr. .. Respondents

Mr.R.B. Paranjpe for the petitioners.

Mr.M.S. Lagu for respondent No.1.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 18TH OCTOBER 2004

P.C. :

1. Heard. Perused the records.

2. The petitioners challenge the concurrent findings arrived at by the courts below to justify the eviction of the petitioners on the ground of subletting. The contention of the petitioners that it was a partnership with the defendant No.3 and there was no subletting by the defendants Nos.1 and 2 in favour of defendant No.3, as was otherwise alleged by the respondents, has been disbelieved. It was sought to be contended on behalf of the petitioners that the courts below erred in ignoring the decision of the Apex Court in the matter of **Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri, AIR 1987 SC 1782**, wherein it was held that merely

because the partnership had fixed amount of income, that does not amount to subletting of the premises and it can still be a partnership. It was also sought to be contended that the said partnership was only for a fixed period of time and it has already been terminated.

3. The decision of the Apex Court nowhere lays down the law that a mere fixed income in favour of one of the partners would not justify any adverse inference against the tenant in relation to subletting of the premises. In the said case, it was not a fixed income which was in issue, but the deed of partnership apparently disclosed certain fixed percentage of the income derived from the business of the firm. In the case in hand, the findings arrived at by the courts below disclose that the petitioners had not disclosed any income from the alleged partnership firm to the Income Tax Department in their income tax returns. Admittedly, the petitioners had not produced any material as regards the distribution of income from the alleged business of the partnership firm. Added to this, the detailed analysis of the evidence on record by both the courts below discloses that all the documentary evidence on record clearly revealed that the exclusive possession of the premises was handed over to the defendant No.3 and the defendants Nos.1 & 2 were merely receiving fixed amount

of Rs.500/- per month for such occupation of defendant No.3 in the suit premises. The said findings are clearly borne out from the record and do not warrant any interference in writ jurisdiction.

4. The concurrent findings arrived at by the courts below being based on the detailed analysis of the materials on record in proper perspective by the courts below, there is no case for interference in exercise of powers under Article 227 of the Constitution of India. The decision of the Apex Court in Girdharbhai's case (supra) is of no help to the petitioners. Hence, the petition is rejected.

5. On oral request of the learned advocate for the petitioners, time to deliver the possession is extended till 28th February 2005 subject to the petitioners and all the major members of their family in occupation of the premises filing an undertaking before the Additional Registrar (Judicial) within a period of 3 weeks that they would deliver the peaceful vacant possession to the respondent landlord on or before 28th February 2005 and, in the meanwhile, will not induct any third person therein nor create any third party interest of any nature whatsoever in the suit premises.

6. In the event the petitioners fail to file the undertaking as aforesaid, the order extending the period for delivery of possession shall stand automatically vacated without being referred to the court.

7. Authenticated copy of this order be made available to the parties.

(R.M.S. KHANDEPARKAR, J.)